

Application No. : 10/735,260
Filed : December 11, 2003

REMARKS

Claims 57-100 were pending in the application. By this paper, Applicant has canceled Claims 74-81 and withdrawn Claims 82 – 100 pending the outcome of Applicant's traversal of the Examiner's restriction requirements. Accordingly, Claims 57-73 are presented for examination herein.

Restriction Election and Basis for Traversal

Applicant elects with traverse the invention of Group I drawn to a method of reliably transmitting data across a communication medium, classified in class 714, subclass 747, per page 2 of the Office Action.

With regards to the Examiner's requirement for restriction between the inventions of Group I and Group III, Applicant traverses the Examiner's finding that they are related as sub-combinations disclosed as usable together in a single combination. Applicant respectfully requests the Examiner demonstrate where in Applicant's specification the two inventions (Groups I and III) have been disclosed by Applicant as sub-combinations usable together to form a single combination. Applicant submits that the inventions of Groups I and III are in fact related, but that they are merely variants of the same invention; namely, they are variants of encoding data to improve reliability of transmission. Applicant submits that as the inventions of Groups I and III are related (i.e., not independent) and not distinct, the Examiner's requirement for restriction of Groups I and III is improper.

Applicant also respectfully submits that there would be no serious burden on the Examiner if the restriction between Group I and Group III were not required. Per MPEP §808.02, in order to find a serious burden on the Examiner, the inventions must be (a) of separate classifications, (b) of separate status in the art, or (c) of different fields of search. Although the Examiner has proposed that Group I and Group III are properly classified under separate classifications, Applicant believes that either of the classifications individually, as set forth by the Examiner, would be sufficient for both Group I and Group III. As both inventions are directed to data encoding for reliable transmission, Applicant submits that the separate classifications proposed by the Examiner are not necessary. Accordingly, Applicant submits that the Examiner's requirement of restriction between Group I and Group III is improper on this independent basis

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as well. Based on the foregoing reasoning, Applicant respectfully submits that the Examiner's requirement for restriction of the Group I and Group III inventions is improper.

Other Remarks

5 Applicant hereby specifically reserves the right to prosecute claims of different or broader scope in a continuation or divisional application.

10 Applicant notes that any claim cancellations or additions made herein are made solely for the purposes of more clearly and particularly describing and claiming the invention and responding to the aforementioned restriction election, and not for purposes of overcoming art or for patentability. The Examiner should infer no (i) adoption of a position with respect to patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on such cancellations or additions.

15 Furthermore, any remarks made with respect to a given claim or claims are limited solely to such claim or claims.

If the Examiner has any questions or comments which may be resolved over the telephone, he is requested to call the undersigned at (858) 675-1670.

20 Respectfully submitted,

GAZDZINSKI & ASSOCIATES

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